AFR—78

(12)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.M.P.No. 316/2007 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

SB: HON'BLE SHRI DHIRENDRA MISHRA, J.

APPLICANT Murlidhar Gupta, son of Shiv Prasad Gupta, aged about 32 years, Occupation – Shiksha Karmi, R/o Village Sodekala, Police Station Pusaur, Tehsil and District – Raigarh (C.G.)

Vs.

NON-APPLICANT State of Chhattisgarh, through District Magistrate, Raigarh, District Raigarh (C.G.)

5-9-2007

Shri Amit Sharma, Advocate for the petitioner.

Shri G.K. Beriwal, Addl. Public Prosecutor for the State.

The petitioner has filed this petition under Section 482 of Cr.P.C. against the order dated 12-7-2007 passed in Criminal Revision No. 89/2007 whereby learned 4th Additional Sessions Judge (F.T.C.) Raigarh has rejected the revision of the petitioner preferred against the order of Chief Judicial Magistrate, Raigarh passed in Criminal Case No. 1019/2007 by which the application of the petitioner under Section 167 (2) of the Cr.P.C. has been rejected.

The undisputed facts of the case are that the petitioner was arrested on 6-5-2007 and he was remanded to first judicial custody on 8-5-2007 for offences punishable under Sections 419 and 420 of I.P.C. and the charge-sheet against the petitioner was filed only on 7-7-2007 i.e. 61st day after the petitioner was remanded to the judicial custody by the Chief Judicial Magistrate.

Learned counsel for the petitioner submits that the offence under Section 420 of I.P.C. is punishable with imprisonment of 7 years and as per the provisions of Section 167(2) proviso *(a)(ii)* of the Cr.P.C., the applicant was entitled for bail as the charge sheet could not be filed within a period

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(23)

मामला क्रमांक Cr.M.P.No. 316/2007 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

of 60 days from the date of first remand. However, the trial Court rejected the application for bail under Section 167(2) of the Cr.P.C. with the observation that for the purpose of computing 60 days either the date of arrest or the date on which the charge sheet is filed is to be excluded and thus the charge sheet has been filed within a period of 60 days and the above finding has been subsequently affirmed by the learned Additional Sessions Judge by the impugned order.

Learned counsel for the petitioner submits that it is settled law that for the purpose of Section 167(2) of the Cr.P.C., the detention period of 60 days envisaged by proviso *(a)(ii)* commences from the date when the accused is remanded to judicial custody for the first time by the concerned Magistrate. In the instant case, first remand was obtained on 8-5-2007 and thus the charge sheet was admittedly filed on 61st day after the first remand was obtained, therefore, the petitioner is entitled to be released on bail under Section 167(2) of the Code. Reliance is placed on the decision in the matter of **Chaganti Satyanarayana –v- State of A.P.** reported in **AIR 1986 SC 2130**.

The above legal position is not disputed by the learned Additional Public Prosecutor.

Thus in view of the settled law that the period commences from the date of first judicial remand, the finding recorded by both the Courts below that the charge sheet has been filed on the 60th day from the date of arrest is based on erroneous computation and the same cannot be sustained.

In the result, the petition is allowed. The orders passed by both the Courts below are set aside.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.M.P.No 316/2007 सन् 200

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	Consequently, the application of the petitioner under Section 167(2) of the Cr.P.C. is allowed and it is directed that in the event of petitioner's furnishing a personal bond in the sum of Rs. 10,000/- with two solvent sureties each of the like amount to the satisfaction of the Chief Judicial Magistrate, Raigarh, he shall be released on bail. Certified copy as per rules. Sd/- Dhirendra Mishra Judge	

GRPRJ — FS/246— 2/2007 — 50,000.